



NATIONAL CONGRESS OF AMERICAN INDIANS

June 26, 2017

The Honorable Ajit Pai
The Honorable Mignon Clyburn
The Honorable Michael O'Rielly
Federal Communications Commission
445 12th Street, SW
Washington, DC 20054

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NCAI HEADQUARTERS

1516 P Street, N.W.
Washington, DC 20005
202.466.7767
202.466.7797 fax
www.ncai.org

RE: WC Docket No. 10-90 Operating Expense Limitation Rule for Carriers Serving Tribal Lands

Dear Chairman Pai and Commissioners Clyburn and O'Rielly:

The Federal Communications Commission and the National Congress of American Indians share many common goals. One of our common goals is finding innovative solutions to removing barriers to broadband deployment on Tribal Lands.

The purpose of this letter is to make the Commission aware, and to formally submit for the record in WC Docket No. 10-90, the adoption of an NCAI resolution regarding the delay in voting on an item that has been pending before the Commission for over four months. That draft Order would provide an exemption from the application of the operating expense limitation rule to carriers primarily serving Tribal lands. As the attached NCAI resolution states, the Commission must "move forward expeditiously and adopt the Order exempting carriers primarily serving Tribal Lands from the operating expense limitation rule."

For over two decades, the Commission has acknowledged that carriers serving Tribal lands face higher costs than those serving other areas of the country. Chairman Pai recently acknowledged this in a letter to Congress in which he stated "carriers serving Tribal lands incur costs that other rural carriers do not face, resulting in significantly higher operating expenses to serve very sparsely populated service areas." NCAI has long advocated for broadband deployment and adoption to Tribal areas and has asked the Commission to recognize the higher costs associated with serving Tribal lands and their residents.

As part of the Commission's proceeding in WC Docket No. 10-90, in which it sought comment on a proposal to exempt carriers serving Tribal lands from the operating expense limitation rule, a number of carriers submitted evidence of higher operating expenses associated with deploying broadband on Tribal lands. Moreover, ***not a single commenter filed in opposition*** to the proposal put forward by the Commission. In fact, a number of carriers filed in support of not only providing an exemption to the operating expense limitation rule, but in favor of providing all carriers serving Tribal lands additional support, through a Tribal Broadband Factor, to promote deployment to Tribal lands.

As Chairman Pai stated in a recent letter to Congress, the draft Order would “allow carriers serving Tribal lands a greater ability to recover operating expenses, thus improving the financial viability of operating a broadband network serving Tribal lands.” The delay in voting this item is jeopardizing the financial viability of a number of carriers that are seeking to serve Tribal lands, which as the Commission knows are the least-served in the country. Much remains to be done to deliver broadband to Tribal lands and we encourage Chairman Pai, Commissioner Clyburn and Commissioner O’Rielly to explore ways to target additional resources to unserved areas on Tribal lands, but first we need to take this initial step to remove the harm that is being caused by the operating expense limitation rule.

NCAI appreciates the Commission’s efforts in addressing this issue. However, NCAI is extremely concerned that this item remains pending after so much time.

With the full support of our membership by our attached resolution, we ask the Commission to afford this draft Order an up or down vote in a timely manner. NCAI urges the Chairman to use whatever tools are at his disposal to proceed to a final vote.

Sincerely,

A handwritten signature in dark ink, reading "Brian Cladoosby". The signature is fluid and cursive, with the first name "Brian" and last name "Cladoosby" clearly legible.

Brian Cladoosby
President, National Congress of American Indians



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The National Congress of American Indians Resolution #MOH-17-050

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TITLE: Request that the Federal Communications Commission Modify its Operating Expense Limitation Rule for Carriers Serving Tribal Lands

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, on March 30, 2016, the Federal Communications Commission (FCC) adopted the *Universal Service Fund/Rate of Return Reform Order* (“*Order*”), in which the FCC, among other things, adopted a rule that limited the recovery allowed for operating expenses for rate of return carriers; and

WHEREAS, as part of that decision the FCC sought comment in a Further Notice of Proposed Rulemaking (“*Tribal Further Notice*”) on whether the operating expense limitation rule and other reforms adopted in the *Order* had a negative impact on carriers serving Tribal lands and if so whether it should waive the application of the operating expense limitation rule for carriers serving Tribal lands; and

WHEREAS, the FCC has for almost two decades recognized that there are unique costs associated with serving Tribal lands and those unique costs require additional support to advance broadband deployment; and

WHEREAS, the record developed in response to the *Tribal Further Notice* provided specific information on the unique costs and impact of the *Order* on carriers primarily serving Tribal lands; and

WHEREAS, no parties filed in opposition to waiving the operating expense limitation rule as it applies to carriers primarily serving Tribal lands; and

WHEREAS, on February 13, 2017, the FCC Chairman Pai circulated to his fellow commissioners a draft order granting an exemption to the operating expense limitation rule for carriers primarily serving Tribal lands; and

WHEREAS, more than 115 days have passed for careful consideration and deliberation of the draft order.

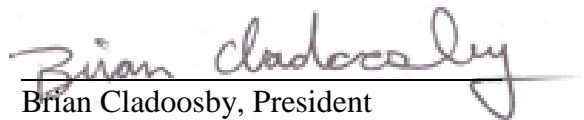
NOW THEREFORE BE IT RESOLVED, that the National Congress of American Indians (NCAI) hereby urges the Federal Communications Commission to move forward expeditiously and adopt the order exempting carriers primarily serving Tribal Lands from the operating expense limitation rule; and

BE IT FURTHER RESOLVED, NCAI further urges the FCC to take measures to promote broadband adoption and deployment on Tribal Lands; and

BE IT FINALLY RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2017 Midyear Session of the National Congress of American Indians, held at the Mohegan Sun Convention Center, June 12 to June 15, 2017, with a quorum present.


Brian Cladoosby, President

ATTEST:


Aaron Payment, Recording Secretary